

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

RHODE ISLAND ECONOMIC
DEVELOPMENT CORPORATION,

Plaintiff,

v.

WELLS FARGO SECURITIES, LLC;
BARCLAYS CAPITAL, PLC; FIRST
SOUTHWEST COMPANY; STARR
INDEMNITY AND LIABILITY COMPANY;
CURT SCHILLING; THOMAS ZACCAGNINO;
RICHARD WESTER; JENNIFER MACLEAN;
ROBERT I. STOLZMAN; ADLER POLLOCK &
SHEEHAN, P.C.; MOSES AFONSO RYAN
LTD.; ANTONIO AFONSO, JR.; KEITH
STOKES; and J. MICHAEL SAUL,

Defendants.

C.A. No. PB-12-5616

JURY TRIAL DEMANDED

**DEFENDANT FIRST SOUTHWEST COMPANY'S ANSWER AND DEFENSES TO PLAINTIFF
RHODE ISLAND ECONOMIC DEVELOPMENT CORPORATION'S FIRST AMENDED COMPLAINT**

Defendant First Southwest Company ("First Southwest") provides the following answer, responses, and defenses to the allegations contained in the Rhode Island Economic Development Corporation's ("EDC") First Amended Complaint.

I. ANSWER TO "PARTIES" ALLEGATIONS

1. First Southwest admits that the EDC is a corporation created by R.I. Gen. Laws § 42-64-1 *et seq.* First Southwest denies that the EDC is a quasi-public corporation. First Southwest admits only that the EDC has characterized the contents of R.I. Gen. Laws § 42-64-1 *et seq.*, which is in writing, and First Southwest denies the allegations in Paragraph 1 to the extent the EDC has mischaracterized the contents of the statutes.

SUPERIOR COURT

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2. First Southwest admits only that the EDC has quoted a portion of the statute, which is in writing, and First Southwest denies the allegations in Paragraph 2 to the extent the EDC has mischaracterized the contents of the statute.

3. The first sentence of Paragraph 3 is a conclusion of law; no response is required. First Southwest admits allegations in the second and third sentences.

4. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 4 and therefore denies them. First Southwest admits the allegations in the second sentence. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence and therefore denies them.

5. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 5 and therefore denies them. First Southwest admits the allegations in the second sentence.

6. First Southwest admits the allegations in the first and second sentences of Paragraph 6. As for the third sentence, First Southwest denies that it acted as financial advisor to the EDC in connection with the EDC's loan to 38 Studios, LLC ("38 Studios") but admits that it acted as financial advisor to the EDC in connection with the EDC's issuance of the Bonds.

7. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 7 and therefore denies them. First Southwest admits the allegations in the second sentence. First Southwest admits that the EDC sued Starr pursuant to R.I. Gen. Laws § 27-7-2.4 and denies any other allegations in the third sentence of Paragraph 7. The third sentence characterizes the contents of R.I. Gen. Laws § 27-

7.2.4, which is in writing, and First Southwest denies the allegations in the third sentence to the extent the EDC has mischaracterized the contents of the statute.

8. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 and therefore denies them.

9. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 and therefore denies them.

10. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 and therefore denies them.

11. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 and therefore denies them.

12. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first, second, and third sentences of Paragraph 12 and therefore denies them. As for the fourth sentence, First Southwest admits that Defendant Robert I. Stolzman ("Stolzman") was the Secretary of the EDC at all times relevant to this action, that he attended some meetings of the EDC Board in his capacity and as secretary and general counsel, that he took notes at the meetings he attended, but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies them.

13. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 13 and therefore denies them. First Southwest admits the allegations in the second sentence. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence and therefore denies them. First Southwest admits the allegations in the fourth sentence.

14. First Southwest admits that Defendant Keith Stokes ("Stokes") was an officer and employee of the EDC with the title of Executive Director at all times relevant to this action. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 14 and therefore denies them.

15. First Southwest admits that Defendant J. Michael Saul ("Saul") was an employee of the EDC with the title of Deputy Director at all times relevant to this action. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 15 and therefore denies them.

II. ANSWER TO "KEY NON-PARTIES" ALLEGATIONS

16. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 16 and therefore denies them. First Southwest admits the allegations in the second sentence. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence and therefore denies them. First Southwest admits the allegations in the fourth, fifth, and sixth sentences.

17. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 and therefore denies them.

18. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 and therefore denies them.

19. Admitted.

20. Admitted.

III. ANSWER TO "JURISDICTION AND VENUE" ALLEGATIONS

21. The first sentence of Paragraph 21 is a conclusion of law; no response is required. First Southwest denies the allegations in the second and third sentences. The fourth sentence is a conclusion of law; no response is required.

22. Paragraph 22 is a conclusion of law; no response is required.

IV. ANSWER TO "FACTS" ALLEGATIONS

A. Answer to "Overview" Allegations

23. First Southwest admits the allegations in the first, second, and third sentences of Paragraph 23. First Southwest denies the allegations in the fourth sentence. As for the fifth sentence, First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies them. As for the sixth sentence, First Southwest admits only that the EDC Board approved the proposed transaction, but First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies them.

24. First Southwest admits that it advised the EDC Board on certain risks associated with the Bonds, but First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first and second sentences in Paragraph 24 and therefore denies them. With respect to the third sentence, First Southwest admits only that the EDC Board approved the loan and the issuance of the Bonds but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies them.

25. First Southwest admits the allegations in the first sentence of Paragraph 25. First Southwest denies the allegations in the second and third sentences.

26. First Southwest admits that the EDC has sued all of the Defendants identified in Paragraph 26 but denies all liability and the remaining allegations in Paragraph 26.

27. First Southwest denies the allegation in the first sentence of Paragraph 27. First Southwest admits the allegations in the second sentence. First Southwest admits that the third sentence quotes a portion of the Term Sheet, which is in writing, and First Southwest denies the allegations in the third sentence to the extent they mischaracterize the contents of the Term Sheet. First Southwest denies the allegations in the fourth sentence.

28. First Southwest denies the allegations in the first sentence of Paragraph 28. As for the second sentence, First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding what the EDC thinks or can identify and therefore denies them, and First Southwest denies that any EDC Board member was misled on the 38 Studios transaction or on the underlying Bonds and denies all other allegations. As for the third sentence, First Southwest denies that any member of the EDC Board was not aware of "the shortfall." First Southwest further denies that the loan to 38 Studios went forward in violation of Rhode Island law. First Southwest further denies the allegations in the third sentence to the extent they mischaracterize Rhode Island law and denies any other allegations in the third sentence.

29. Denied.

30. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 and therefore denies them.

31. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 31 and therefore denies them. First Southwest denies that there were any undisclosed risks or information about the loan to the 38

Studios. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the second sentence and therefore denies them.

32. First Southwest admits that the complaint purports to plead claims of intentional misconduct and negligent conduct but denies liability as to each and every claim. First Southwest admits that the EDC's purported claims of intentional misconduct include the allegations set forth in the second sentence and in the lettered list following Paragraph 32 but denies all of these claims.

**B. Answer to "Defendant Knew or Should Have Known,
But Failed to Inform the EDC Board, That 38 Studios Was Destined to Fail
According to 38 Studios' Own Financial Projections" Allegations**

33. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33 and therefore denies them.

34. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34 and therefore denies them.

35. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 35 and therefore denies them. First Southwest denies the allegations in the second sentence as to Maureen Gurghigian. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the second sentence and therefore denies them.

36. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 36 and therefore denies them.

37. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 37 and therefore denies them. First Southwest admits that the second sentence quotes a portion of the March 31, 2010 draft Term Sheet, which is in writing, and First Southwest denies the allegations in the second sentence to

the extent they mischaracterize the contents of the March 31, 2010 draft Term Sheet. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the second sentence and therefore denies them. As for the third sentence, First Southwest admits that the EDC purports to define the term "Term Sheet" in the complaint, but First Southwest denies all of the other allegations.

38. First Southwest admits the allegations in Paragraph 38 as to any allegation about First Southwest but lacks knowledge or information sufficient to form a belief as to the truth of the allegations against other defendants and therefore denies them.

39. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39 and therefore denies them.

40. First Southwest admits that from the outset of its involvement in the discussions between the EDC and 38 Studios, it knew that the State of Rhode Island and various agencies thereof, including the EDC, historically have relied upon their ability to raise funds through bonds that are not the general obligations of the State or of said agencies, denies the remaining allegations against it in the first sentence of Paragraph 40, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies them. First Southwest denies the allegations in the second and third sentences.

41. The allegations in the first sentence of Paragraph 41 refer to the April 1 Projections, which is in writing, and First Southwest denies the allegations in the first sentence to the extent they mischaracterize the contents of the April 1 Projections. As for the second sentence, First Southwest denies that the information in the April 1 Projections about 38 Studios' receipt of net loan proceeds from the EDC of \$75 million was an assumption and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations

in the second sentence and therefore denies them. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence and therefore denies them.

42. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42 and therefore denies them.

43. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43 and therefore denies them.

44. Admitted.

45. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first and second sentences of Paragraph 45 and therefore denies them. First Southwest admits the allegations in the third sentence as to First Southwest. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the third sentence and therefore denies them. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the fourth sentence and therefore denies them.

46. First Southwest admits that it was involved in discussions about the possibility of grossing-up the amount of the loan to 38 Studios, denies that it was involved in any decision not to gross-up the amount of the loan, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence in Paragraph 46 and therefore denies them. As for the second and third sentences, First Southwest denies the allegations to the extent any allegation is made against First Southwest but lacks knowledge or information sufficient to form a belief as to the truth of the allegations against other defendants

and therefore denies them. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the fourth sentence and therefore denies them.

47. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 and therefore denies them.

48. First Southwest denies the allegations in the first sentence of Paragraph 48 as to First Southwest. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence and therefore denies them. First Southwest denies the allegations in the second sentence as to First Southwest. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the second sentence and therefore denies them. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence and therefore denies them.

49. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49 and therefore denies them.

50. First Southwest admits that Maureen Gurghigian was provided with some of the draft Term Sheets. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 50 and therefore denies them.

51. First Southwest admits that Paragraph 51 refers to the draft Term Sheet, which is in writing, and First Southwest denies the allegations to the extent they mischaracterize the contents of the draft Term Sheet. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of any remaining allegations in Paragraph 51 and therefore denies them.

52. First Southwest denies any allegation made against it in the first sentence of Paragraph 52 but lacks knowledge or information sufficient to form a belief as to the truth of the allegations against the remaining defendants and therefore denies them. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence and therefore denies them.

53. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53 and therefore denies them.

54. Denied.

55. First Southwest denies any allegation made against it in the first sentence in Paragraph 55 but lacks knowledge or information sufficient to form a belief as to the truth of the allegations against the remaining defendants and therefore denies them. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence and therefore denies them.

56. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56 and therefore denies them.

57. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57 and therefore denies them.

58. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 58 and therefore denies them.

59. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59 and therefore denies them.

60. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 60 and therefore denies them. First

Southwest admits that the second sentence quotes part of an e-mail, which is in writing, and First Southwest denies the allegations to the extent they mischaracterize the contents of the e-mail. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the second sentence and therefore denies them.

61. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61 and therefore denies them.

62. First Southwest admits that Paragraph 62 quotes part of an e-mail, which is in writing, and First Southwest denies the allegations in Paragraph 62 to the extent they mischaracterize the contents of the e-mail.

63. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 63 and therefore denies them.

64. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 64 and therefore denies them.

65. First Southwest admits that it received a copy of a PowerPoint presentation from Saul but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence of Paragraph 65 and therefore denies them. First Southwest admits that the second and third sentences quote part of a PowerPoint presentation dated June 9, 2010, and circulated by Saul, which is in writing, and First Southwest denies the allegations in the second and third sentences to the extent they mischaracterize the contents of the PowerPoint presentation. As for the fourth sentence, First Southwest denies the allegations to the extent that they characterize the slide as a "misrepresentation" but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies them. As for the fifth sentence, First Southwest had no knowledge of whether the EDC

staff had completed any meaningful analysis of 38 Studios' projection or the loan transaction and therefore could not have told the EDC Board anything about what kind of analysis the EDC staff had completed of 38 Studios' projections or the loan transaction. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the fifth sentence and therefore denies them.

66. First Southwest admits that at some point in time it received a copy of the PowerPoint slides that Michael Saul may have presented to the EDC Board on June 9, 2010, but First Southwest did not attend that meeting and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence of Paragraph 66 and therefore denies them. First Southwest admits that the second and third sentences quote part of a PowerPoint presentation dated June 9, 2010, and circulated by Saul, which is in writing, and First Southwest denies the allegations in the second and third sentences to the extent they mischaracterize the contents of the PowerPoint presentation. First Southwest denies the allegations in the fourth sentence.

67. First Southwest admits that the first and second sentences of Paragraph 67 quote part of a PowerPoint presentation dated June 9, 2010, and circulated by Saul, which is in writing, and First Southwest denies the allegations in the first and second sentences to the extent they mischaracterize the contents of the PowerPoint presentation. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence and therefore denies them.

68. First Southwest denies the allegations in the first sentence of Paragraph 68 as to itself but lacks knowledge or information sufficient to form a belief as to the truth of the

remaining allegations and therefore denies them. First Southwest denies the allegations in the second sentence.

69. First Southwest did not attend the June 9, 2010 meeting and therefore lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 69 about what was said at that meeting and what supposedly needed to be said and therefore denies them.

70. First Southwest admits that the EDC Board knew that 38 Studios would receive net proceeds of less than \$75 million. First Southwest further admits that it did not tell the Board anything during the June 9, 2010 meeting because First Southwest did not attend that meeting. First Southwest denies that any information was withheld from the EDC Board about 38 Studios' financial projections. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 70 and therefore denies them.

71. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71 and therefore denies them.

72. First Southwest admits the allegations in the first sentence of Paragraph 72. First Southwest admits that the second sentence quotes part of a PowerPoint presentation dated June 9, 2010, and circulated by Saul, which is in writing, and First Southwest denies the allegations in the second sentence to the extent they mischaracterize the contents of the PowerPoint presentation.

73. Admitted.

74. First Southwest admits that the EDC has quoted a portion of the law creating the Jobs Creation Guaranty Program, which is in writing, and First Southwest denies the allegations in Paragraph 74 to the extent they mischaracterize the contents of the law.

75. Admitted.

76. Admitted.

77. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegation in the first sentence of Paragraph 77 that at the time Wells Fargo was soliciting the EDC to be appointed as the EDC's placement agent and therefore denies it. First Southwest admits that the role of a placement agent involves putting together the factual disclosure of the risks of the transaction in an offering document such as a private placement memorandum, and selling the Bonds on behalf and for the account of the issuer. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence and therefore denies them. First Southwest admits the allegations in the third sentence.

78. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 78 and therefore denies them. The second and third sentences are conclusions of law; no response is required.

79. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 79 and therefore denies them. First Southwest admits that with the exception of the Governor, the EDC Board members are all unpaid volunteers, but First Southwest denies the remaining allegations in the second sentence. First Southwest denies that it solicited the EDC Board's dependence upon it and knowingly accepted and benefited from the EDC's trust, confidence, and reliance upon it. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence that other Defendants solicited the EDC Board's dependence upon them and knowingly accepted and benefited from the EDC's trust, confidence, and reliance upon them and

therefore denies these allegations. The allegation in the third sentence that the Defendants were fiduciaries who owed fiduciary duties to the EDC and to the EDC Board is a conclusion of law; no response is required.

80. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 80 and therefore denies them. First Southwest admits that the second sentence quotes a slide from a PowerPoint presentation dated June 14, 2010, which is in writing, and First Southwest denies the allegations in the second sentence to the extent they mischaracterize the contents of the PowerPoint presentation. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third and fourth sentences and therefore denies them. First Southwest denies the allegation in the fifth sentence.

81. First Southwest admits that the first sentence of Paragraph 81 characterizes the contents of a PowerPoint slide, which is in writing, and First Southwest denies the allegations in the first sentence to the extent they mischaracterize the contents of the PowerPoint slide. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences and therefore denies them.

82. First Southwest admits that Maureen Gurghigian was present at EDC Board meetings on June 14, 2010, July 15, 2010, and July 26, 2010, but denies that Maureen Gurghigian was present at the EDC Board meeting on June 9, 2010. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence of Paragraph 82 and therefore denies them. First Southwest denies the allegations in the second sentence.

83. First Southwest admits that the allegations in Paragraph 83 refer to an Inducement Resolution, which is in writing, and First Southwest denies the allegations in Paragraph 83 to the extent they mischaracterize the contents of the Inducement Resolution.

84. First Southwest admits that Paragraph 84 characterizes the contents of various e-mails, which is in writing, and First Southwest denies the allegations in Paragraph 84 to the extent they mischaracterize the contents of said e-mails.

85. First Southwest admits the allegations in the first sentence of Paragraph 85. First Southwest admits that the second sentence quotes part of an e-mail, which is in writing, and First Southwest denies the allegations in the second sentence to the extent they mischaracterize the contents of the e-mail. First Southwest admits the allegations in the third sentence.

86. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 86 and therefore denies them.

87. Admitted.

88. Admitted.

89. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 89 and therefore denies them.

90. First Southwest admits the allegations in the first sentence in Paragraph 90 as to itself but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies them. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences and therefore denies them. First Southwest denies the allegations in the fourth sentence.

91. First Southwest admits that the first sentence of Paragraph 91 characterizes the April 1 Projections, which is in writing, and First Southwest denies the allegations in the first

sentence to the extent they mischaracterize the contents of the April 1 Projections. As for the second sentence, First Southwest denies the allegations to the extent any allegation is made against First Southwest but lacks knowledge or information sufficient to form a belief as to the truth of the allegations against other defendants and therefore denies them. First Southwest admits the allegations in the third sentence.

92. First Southwest admits the allegations in the first sentence of Paragraph 92. First Southwest admits that the second sentence quotes an e-mail, which is in writing, and First Southwest denies the allegations in the second sentence to the extent they mischaracterize the contents of the e-mail.

93. First Southwest denies the allegations in the first sentence of Paragraph 93. First Southwest denies that information about 38 Studios' finances and capital needs was not clear to the EDC Board. First Southwest denies that the Term Sheet stated that the net proceeds would be sufficient. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence and therefore denies them.

94. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first and second sentences in Paragraph 94 and therefore denies them. As for the third sentence, First Southwest admits that it knew that 38 Studios needed more than the net proceeds from the Bonds to finance its relocation to Rhode Island and the completion of Copernicus. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence about what the other Defendants knew or should have known and therefore denies them. First Southwest denies any remaining allegations in the third sentence. First Southwest denies the allegations in the fourth sentence.

95. The first sentence of Paragraph 95 refers to the Term Sheet, which is in writing, and First Southwest denies the allegations in the first sentence to the extent they mischaracterize the contents of the Term Sheet. As for the second sentence, First Southwest admits that the Term Sheet specifically identified 38 Studios' financial projections by the legend "38 Studio 6 Year Plan – In-State Loan View – DRAFT – 04.01.10" but denies the remaining allegations. First Southwest admits that the third sentence quotes an e-mail, which is in writing and First Southwest denies the allegations in the third sentence to the extent they mischaracterize the contents of the e-mail. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the fourth sentence and therefore denies them.

96. First Southwest admits that the June 24, 2010 Term Sheet was sent to the EDC Board members on July 13, 2010. First Southwest denies that First Southwest had agreed or been told that the June 24, 2010 Term Sheet would be sent to the EDC Board members. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 96 and therefore denies them.

97. First Southwest admits the allegations in the first and second sentences of Paragraph 97. First Southwest admits that Saul discussed the business terms, admits that it reviewed the risks associated with the 38 Studios bond issuance, and denies the remaining allegations in the third sentence. First Southwest admits the allegations in the fourth sentence.

98. First Southwest admits that it received, reviewed, and suggested changes to the Term Sheet, that it agreed to be the EDC's financial advisor on the 38 Studios transaction, and that its duties to the EDC Board included assistance in the development and analysis of certain provisions of the Term Sheet. First Southwest lacks knowledge or information sufficient to form

a belief as to the truth of the allegation about what the EDC Board was relying on and therefore denies it. First Southwest denies the remaining allegations in Paragraph 98.

99. Denied.

100. First Southwest admits the allegations in the first sentence of Paragraph 100. First Southwest admits that the second and third sentences quote a draft resolution, which is in writing, and First Southwest denies the allegations in the second and third sentences to the extent they mischaracterize the contents of the draft resolution.

101. First Southwest admits that Paragraph 101 characterizes R.I. Gen. Laws § 42-64-10, which is in writing, and First Southwest denies the allegations in Paragraph 101 to the extent they mischaracterize the contents of the statute. First Southwest further denies that the EDC Board was not aware of the shortfall at the time it made its finding and authorized the transaction. First Southwest denies any remaining allegations in Paragraph 101.

102. First Southwest denies the allegations in Paragraph 102 to the extent any allegation is made against First Southwest but lacks knowledge or information sufficient to form a belief as to the truth of the allegations against other defendants and therefore denies them.

103. Denied.

104. First Southwest denies the allegations in Paragraph 104 to the extent any allegation is made against First Southwest but lacks knowledge or information sufficient to form a belief as to the truth of the allegations against other defendants and therefore denies them.

105. Denied.

106. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first and second sentences of Paragraph 106 and therefore denies them. First Southwest denies the allegations in the third sentence to the extent any

allegation is made against First Southwest but lacks knowledge or information sufficient to form a belief as to the truth of the allegations against other defendants and therefore denies them.

107. First Southwest admits that on July 26, 2010, the EDC Board convened and adopted the Authorizing Resolution, lacks knowledge or information sufficient to form a belief as to the truth of the allegation that Curt Schilling attended that meeting and therefore denies it, and denies the remaining allegations in the first sentence of Paragraph 107. First Southwest denies the allegations in the second sentence.

108. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 108 and therefore denies them. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence and therefore denies them. First Southwest denies the allegations in the third sentence.

109. First Southwest admits that on July 26, 2010, the EDC Board adopted the Authorization Resolution. First Southwest denies that the Authorizing Resolution contained a false finding. First Southwest admits that Paragraph 109 characterizes the contents and effect of Authorizing Resolution, which is in writing, and First Southwest denies the allegations in Paragraph 109 to the extent they mischaracterize the contents and effect of the Authorizing Resolution.

110. Denied.

111. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 111 and therefore denies them. First Southwest admits the allegations in the second sentence. As for the third sentence, First Southwest denies that the final Term Sheet contained any misrepresentation but lacks knowledge

or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies them. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the fourth and fifth sentences and therefore denies them.

C. Answer to "Defendants' Continued Concealment of the Shortfall" Allegations

112. First Southwest admits that the first sentence of Paragraph 112 quotes a portion of a press release, which is in writing, and First Southwest denies the allegations in the first sentence to the extent they mischaracterize the contents of the press release. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences and therefore denies them. First Southwest denies the allegations in the fourth sentence.

113. First Southwest admits that Paragraph 113 quotes from the July 26, 2010 Authorizing Resolution, which is in writing, and First Southwest denies the allegations to the extent they mischaracterize the contents of the Authorizing Resolution.

114. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 114 and therefore denies them.

115. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 115 and therefore denies them. In addition, the second sentence of Paragraph 115 is a legal conclusion; no response is required.

116. First Southwest admits that it received a copy of the Equity PPM but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence in Paragraph 116 and therefore denies them. First Southwest admits that the second sentence quotes a portion of the Equity PPM, which is in writing, and First Southwest

denies the allegations in the second sentence to the extent they mischaracterize the contents of the Equity PPM.

117. First Southwest admits that Paragraph 117 quotes a portion of the Equity PPM, which is in writing, and First Southwest denies the allegations in Paragraph 117 to the extent they mischaracterize the contents of the Equity PPM.

118. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 118 and therefore denies them. First Southwest admits that the second and third sentences characterize the Bond PPM, which is in writing, and First Southwest denies the allegations in the second and third sentences to the extent they mischaracterize the contents of the Bond PPM.

119. First Southwest denies the allegations in Paragraph 119 to the extent any allegation is made against First Southwest but lacks knowledge or information sufficient to form a belief as to the truth of the allegations against other defendants and therefore denies them.

120. Denied.

121. First Southwest admits the allegations in the first sentence in Paragraph 121. As for the second sentence, First Southwest admits that it took primary responsibility for dealing with the credit agencies but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies them.

122. First Southwest admits the allegations in the first, second, third, and fourth sentences of Paragraph 122. As for the fifth sentence, First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegation that it sent the two-page document to the Rating Agencies and therefore denies it. First Southwest further denies that the

Rating Agencies relied upon the 38 Studios financial projections in rating the bonds. First Southwest denies any remaining allegations in Paragraph 122.

123. First Southwest admits the allegations in the first sentence of Paragraph 123. First Southwest denies the allegations in the second sentence. The third sentence refers to a document, which is in writing, and First Southwest denies the allegations in the third sentence to the extent they mischaracterize the contents of the document. First Southwest denies the allegations in the fourth and fifth sentences.

124. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegation in the first sentence of Paragraph 124 that the document was forwarded to the Rating Agencies and therefore denies it. First Southwest denies all remaining allegations in Paragraph 124.

125. Denied.

126. Denied.

127. First Southwest admits the allegations in the first sentence of Paragraph 127. First Southwest admits that the second sentence characterizes an e-mail, which is in writing, and First Southwest denies the allegations in the second sentence to the extent they mischaracterize the contents of the e-mail.

128. The allegations in Paragraph 128 refer to a draft Power Point presentation and slides, which are in writing, and First Southwest denies the allegations in Paragraph 128 to the extent they mischaracterize the contents of these documents.

129. First Southwest admits the allegations in the first and second sentences of Paragraph 129. First Southwest admits that it did not suggest any changes to the assertion that the net proceeds would be used to complete production of Copernicus but denies the remaining

allegations in the third sentence. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the fourth sentence and therefore denies them.

130. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 130 and therefore denies them. First Southwest admits the allegations in the second sentence. As for the third sentence, First Southwest denies that it acted as a joint presenter in the presentation to prospective investors on October 6, 2010 but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies them. As for the fourth sentence, it refers to a slide, which is in writing, and First Southwest denies the allegations in the fourth sentence to the extent they mischaracterize the contents of the document. First Southwest denies the remaining allegations in the fourth sentence. First Southwest denies the allegations in the fifth sentence.

131. Denied.

132. First Southwest admits the allegations in the first sentence of Paragraph 132. First Southwest admits that the second sentence quotes a portion of the Bond Placement Agreement ("BPA"), which is in writing, and First Southwest denies the allegations in the second sentence to the extent they mischaracterize the contents of the BPA.

133. First Southwest admits the allegations in the first sentence of Paragraph 133. First Southwest admits that the second sentence quotes a portion of the BPA, which is in writing, and First Southwest denies the allegations in the second sentence to the extent they mischaracterize the contents of the BPA.

134. First Southwest denies the allegations in the first sentence in Paragraph 134 to the extent any allegation is made against First Southwest but lacks knowledge or information sufficient to form a belief as to the truth of the allegations against other defendants and therefore

denies them. First Southwest admits the allegation in the second sentence. First Southwest denies the allegations in the third sentence.

135. First Southwest admits that Paragraph 135 quotes a portion of the BPA, which is in writing, and First Southwest denies the allegations in Paragraph 135 to the extent they mischaracterize the contents of the BPA.

136. Denied.

137. First Southwest admits that Paragraph 137 quotes a portion of the BPA, which is in writing, and First Southwest denies the allegations in Paragraph 137 to the extent they mischaracterize the contents of the BPA.

138. First Southwest admits that Paragraph 138 characterizes the contents of the Bond PPM, which is in writing, and First Southwest denies the allegations in Paragraph 138 to the extent they mischaracterize the contents of the Bond PPM.

139. First Southwest admits that the first sentence of Paragraph 139 characterizes the contents of the BPA, which is in writing, and First Southwest denies the allegations in the first sentence of Paragraph 139 to the extent they mischaracterize the contents of the BPA. First Southwest denies the allegations in the second sentence.

140. First Southwest admits that it was retained in March 2010 and admits that it sent a proposed engagement letter to Michael Saul on October 29, 2010. First Southwest denies the remaining allegations in Paragraph 140, including the second sentence, which quotes a portion of the Engagement Letter, which is in writing.

141. The allegations in Paragraph 141 refer to the Engagement Letter, which is in writing, and First Southwest denies the allegations in Paragraph 141 to the extent that they mischaracterize the contents of the Engagement Letter.

142. Admitted.

143. Admitted.

144. First Southwest admits the allegations in the first sentence of Paragraph 144 that 38 Studios ran out of cash in 2012 and was unable to complete Copernicus and that 38 Studios told EDC staff and counsel that it would run out of money. First Southwest admits that the first sentence characterizes the contents of the April 1 financial projections, which is in writing, and First Southwest denies the allegations in the first sentence to the extent they mischaracterize the contents of the April 1 financial projections. First Southwest admits the allegations in the second sentence.

D. Answer to "Allocation of the Bond Proceeds and the Bonds" Allegations

145. First Southwest admits that the amount deposited to the Capital Reserve Fund was \$12,749,912.50, admits that the deposit to the prepaid interest account was \$10,604,076.63, admits the allegations in footnote 1, admits that the Placement Agents' discount was \$634,065.00, admits that the fee for municipal bond insurance was \$562,935.45, admits that EDC's commitment fee was \$375,000.00, but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 145 (including footnote 2) and therefore denies them.

146. Admitted.

147. First Southwest admits that it was paid a fee of \$120,000.00 out of bond proceeds, but First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 147 and therefore denies them.

E. Answer to "Wells Fargo Secretly Received \$473,912.19 from 38 Studios" Allegations

148. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 148 and therefore denies them.

149. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 149 and therefore denies them.

150. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 150 and therefore denies them.

151. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 151 and therefore denies them.

152. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 152 and therefore denies them.

153. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 153 and therefore denies them.

154. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 154 and therefore denies them.

155. First Southwest admits that Paragraph 155 quotes a portion of the BPA, which is in writing, and First Southwest denies the allegations in Paragraph 155 to the extent they mischaracterize the contents of the BPA.

156. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 156 and therefore denies them.

157. First Southwest admits that the first sentence of Paragraph 157 quotes a portion of the BPA, which is in writing, and First Southwest denies the allegations in the first sentence to the extent they mischaracterize the contents of the BPA. First Southwest lacks knowledge or

information sufficient to form a belief as to the truth of the allegations in the second sentence and therefore denies them.

158. First Southwest admits that the first sentence of Paragraph 158 quotes a portion of the BPA, which is in writing, and First Southwest denies the allegations in the first sentence to the extent they mischaracterize the contents of the BPA. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences and therefore denies them.

159. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 159 and therefore denies them.

F. Answer to "Defendant Adler Pollock's and Saul's Failure to Disclose to the EDC Board the Negative Opinion of Experts" Allegations

160. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 160 and therefore denies them.

161. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 161 and therefore denies them.

162. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 162 and therefore denies them.

163. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 163 and therefore denies them. First Southwest admits that Strategy Analytics issued a report on June 10, 2010. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the second sentence and therefore denies them.

164. First Southwest admits that the first sentence of Paragraph 164 quotes portions of the June 10, 2010 Strategy Analytics Report, which is in writing, and First Southwest denies the

allegations in the first sentence to the extent they mischaracterize the contents of the Strategy Analytics Report. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence and therefore denies them. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence and therefore denies them.

165. Admitted.

166. First Southwest admits that Harvey Cohen and Barry Gilbert made a PowerPoint presentation to the EDC Board at the meeting on June 14, 2010, that identified 38 Studios as an anchor tenant and discussed how the cluster strategy could be fulfilled with 38 Studios but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence of Paragraph 166 and therefore denies them. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence and therefore denies them.

167. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 167 and therefore denies them. First Southwest admits the allegations in the second sentence. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence and therefore denies them.

168. First Southwest admits the allegations in the first sentence of Paragraph 168. First Southwest admits that the second sentence characterizes the contents of the July 16, 2010 e-mail, which is in writing and First Southwest denies the allegations in the second sentence to the extent they mischaracterize the contents of the e-mail.

169. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 169 and therefore denies them.

G. Answer to “Defendants Adler Pollock and Stokes Improperly Denied the EDC Board the Opportunity to Reconsider” Allegations

170. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 170 and therefore denies them. First Southwest admits that Lincoln Chafee sent a letter to Defendant Stokes on August 5, 2010. The remaining allegations in Paragraph 170 characterize the contents of that letter, which is in writing and First Southwest denies the allegations in the second, third, and fourth sentences to the extent they mischaracterize the contents of the letter.

171. First Southwest admits the allegations in the first sentence of Paragraph 171. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegation in the second sentence that Stolzman drafted the August 9, 2010 letter and therefore denies it. First Southwest admits that the second sentence characterizes the August 9, 2010 letter, which is in writing and First Southwest denies the allegations in the second sentence to the extent they mischaracterize the contents of the letter. First Southwest denies the allegation in the third sentence that the statement in the August 9, 2010 letter that the EDC used “sophisticated lending criteria” was misleading if not downright false. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the third sentence and therefore denies them

172. First Southwest admits that on August 16, 2010, the EDC Board members were notified that the August meeting was cancelled, but First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence of Paragraph 172 and therefore denies them. First Southwest admits that the second

sentence quotes an e-mail, which is in writing and First Southwest denies the allegations in the second sentence to the extent they mischaracterize the contents of the e-mail.

173. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 173 and therefore denies them.

174. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 174 and therefore denies them.

H. Answer to "Stolzman Did Not Correct the False Legal Opinion that Stokes Gave to the EDC Board to Keep Them from Reconsidering the 38 Studios Transaction" Allegations

175. First Southwest admits that the first sentence of Paragraph 175 characterizes the contents of an August 6, 2010 letter from Frank Caprio to the EDC Board, which is in writing and First Southwest denies the allegations in the first sentence to the extent they mischaracterize the contents of the letter. First Southwest admits the allegations in the second sentence.

176. First Southwest admits that Paragraph 176 characterizes an August 31, 2010 e-mail, which is in writing and First Southwest denies the allegations in Paragraph 176 to the extent they mischaracterize the contents of the e-mail.

177. The allegation in Paragraph 177 that EDC had no legal obligation to go forward with the 38 Studios transaction calls for a legal conclusion to which no response is required. First Southwest denies the allegation in Paragraph 177 that the EDC Board's Authorizing Resolution and agreement to the Term Sheet were procured through misrepresentations. First Southwest admits the allegation that as of August 31, 2010, the final contract documents had not yet been negotiated. First Southwest denies the remaining allegations, if any, in Paragraph 177.

178. First Southwest admits that Stolzman informed Stokes that the statement Stokes had made to the EDC Board was incorrect and that the EDC did not have a legal obligation to

close, but First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 178 and therefore denies them.

179. Denied.

180. Denied.

181. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 181 and therefore denies them.

182. The allegations in the first sentence of Paragraph 182 call for a legal conclusion to which no response is required. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second, third, and fourth sentences and therefore denies them.

183. As for the first sentence in Paragraph 183, First Southwest admits that a memorandum signed by Stokes, labeled "Confidential," and dated July 22, 2010 was sent to the EDC Board but lacks knowledge or information sufficient to form a belief as to the truth of the allegations that the memorandum was prepared by Stolzman and distributed to Afonso and therefore denies them. First Southwest admits that the first sentence characterizes the memorandum, which is in writing and First Southwest denies the allegations in the first sentence to the extent they mischaracterize the contents of the memorandum. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences and therefore denies them.

184. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 184 that Stolzman drafted and Afonso reviewed the memorandum and therefore denies them. First Southwest admits that the first and second sentences quote portions of the memorandum, which is in writing and First

Southwest denies the allegations in the first and second sentences to the extent they mischaracterize the contents of the memorandum.

185. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 185 and therefore denies them. First Southwest admits that the second sentence quotes a portion of the revised Term Sheet, which is in writing and First Southwest denies the allegations in the second sentence to the extent they mischaracterize the contents of the revised Term Sheet. First Southwest admits that the third sentence characterizes the contents of the revised Authorizing Resolution, which is in writing and First Southwest denies the allegations in the third sentence to the extent they mischaracterize the contents of the revised Authorizing Resolution.

186. As for the first sentence in Paragraph 186, First Southwest denies that it approved the language from the Term Sheet quoted in Paragraph 185 and denies that the EDC Board reached a determination at the July 15th meeting and reiterated that determination at the July 26th meeting that the loan transaction could not close until EDC had received either a completion bond or an independent expert's validation of 38 Studios' timetable and financial projections for completing Project Copernicus on time and within the constraints of its budget. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence about who allegedly drafted and approved the Term Sheet language quoted in Paragraph 185 and therefore denies them. First Southwest admits that the second sentence characterizes the Term Sheet, which is in writing and First Southwest denies the allegations in the second sentence to the extent they mischaracterize the contents of the Term Sheet.

187. Denied.

188. First Southwest denies the allegations in the first sentence of Paragraph 188. First Southwest denies the allegation in the second sentence that it prepared the loan and trust documents. The remaining allegations in the second sentence are conclusions of law; no response is required. To the extent a response is required, First Southwest denies the allegations in the second sentence. First Southwest denies the allegation in the third sentence that it failed to discharge any duty or obligation in connection with the loan and trust documents. First Southwest incorporates by reference its responses to Paragraphs 195–198 of the Complaint, *infra*.

189. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 189 and therefore denies them. First Southwest denies the allegation in the second sentence that it had any involvement, role, or responsibilities in the selection of a third-party monitor. First Southwest denies the allegation in the second sentence that it allowed 38 Studios to reject IFH and instead select International Business Machines Corp. (“IBM”) as the third-party monitor. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the second sentence and therefore denies them.

190. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 190 and therefore denies them.

191. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 191 that IBM was willing to and eventually did enter into an agreement solely with 38 Studios and therefore denies it. First Southwest admits that the remaining allegations in Paragraph 191 characterize the third-party-monitoring agreement, which

is in writing and First Southwest denies the allegations in Paragraph 191 to the extent they mischaracterize the contents of the agreement.

192. First Southwest denies the allegations in the first sentence of Paragraph 192. First Southwest admits that the second sentence quotes a portion of an e-mail, which is in writing and First Southwest denies the allegations in the second sentence to the extent they mischaracterize the contents of the e-mail.

193. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 193 and therefore denies them.

194. First Southwest had no involvement with third-party monitoring and therefore denies the allegations in Paragraph 194.

J. Answer to "Defendants Negligently Drafted the Loan and Trust Agreement" Allegations

195. First Southwest denies the allegations in Paragraph 195 as to First Southwest. First Southwest admits the remaining allegations in Paragraph 195.

196. Denied.

197. First Southwest admits that Paragraph 197 characterizes the contents of the Loan and Trust Agreement ("LTA"), which is in writing and First Southwest denies the allegations in Paragraph 197 to the extent they mischaracterize the contents of the LTA.

198. First Southwest denies the allegations in the first sentence of Paragraph 198. First Southwest denies that it negotiated or drafted the LTA. First Southwest denies that it had any duties with respect to the LTA. First Southwest denies the remaining allegations in the second sentence. To the extent that the second sentence contains legal conclusions, these conclusions do not require a response.

K. Answer to "Defendants' Concealment of Their Failure to Obtain Meaningful Third-Party Monitoring" Allegations

199. First Southwest denies any allegation made against it in the first sentence of Paragraph 199 but lacks knowledge or information sufficient to form a belief as to the truth of the allegations against the remaining defendants and therefore denies them. First Southwest admits that the second sentence quotes a portion of the Bond PPM, which is in writing and First Southwest denies the allegations in the second sentence to the extent they mischaracterize the contents of the Bond PPM. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence and therefore denies them.

200. First Southwest denies the allegations in the first sentence of Paragraph 200. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence and therefore denies them.

201. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 201 and therefore denies them.

202. First Southwest denies the allegations in Paragraph 202 as to First Southwest. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 202 and therefore denies them.

203. First Southwest admits that Paragraph 203 quotes a portion of the BPA, which is in writing and First Southwest denies the allegations in Paragraph 203 to the extent they mischaracterize the contents of the BPA.

204. First Southwest denies the allegations in Paragraph 204 as to First Southwest. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 204 and therefore denies them.

205. First Southwest admits that Moses & Afonso, Ltd. issued an opinion letter on November 2, 2010, which is in writing and First Southwest denies the allegations in the first

sentence of Paragraph 205 to the extent they mischaracterize the contents of the opinion letter. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence and therefore denies them. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence and therefore denies them.

206. First Southwest admits that Adler Pollock & Sheehan P.C. issued an opinion letter on November 2, 2010, which is in writing and First Southwest denies the allegations in the first sentence of Paragraph 206 to the extent they mischaracterize the contents of the opinion letter. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence and therefore denies them. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence and therefore denies them.

207. First Southwest admits that the Closings took place on November 2, 2010, denies that an Initial Assessment and an adequate third-party monitoring system were required, and lacks knowledge or information sufficient to form a belief as to the truth of the allegations about what was "in hand" or "in place" and therefore denies them.

**L. Answer to "Defendants' Further Failure
to Obtain the IBM Initial Assessment" Allegations**

208. First Southwest admits that Paragraph 208 characterizes an agreement between 38 Studios and IBM, which is in writing and First Southwest denies the allegations in Paragraph 208 to the extent they mischaracterize the contents of the agreement. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of any remaining allegations in Paragraph 208 and therefore denies them.

209. First Southwest admits that the first sentence of Paragraph 209 characterizes an agreement between 38 Studios and IBM, which is in writing and First Southwest denies the allegations in the first sentence of Paragraph 209 to the extent they mischaracterize the contents of the agreement. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of any remaining allegations in the first sentence of Paragraph 209 and therefore denies them. First Southwest denies the allegations in the second sentence as to First Southwest. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the second sentence and therefore denies them.

210. First Southwest admits the allegations in Paragraph 210 as to First Southwest. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 210 and therefore denies them.

211. First Southwest admits the allegation in Paragraph 211 that the Closings occurred on November 2, 2010. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 211 and therefore denies them.

212. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 212 and therefore denies them. First Southwest admits that the second sentence quotes a portion of an IBM report, which is in writing and First Southwest denies the allegations in the second sentence to the extent they mischaracterize the contents of the report. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third and fourth sentences and therefore denies them.

Answer to Count I (Breach of Fiduciary Duty)

213. First Southwest restates and realleges its responses to Paragraphs 1-212.

214. The allegations in Paragraph 214 call for a conclusion of law; no response is required.

215. Paragraph 215 is a conclusion of law; no response is required. To the extent a response is required, First Southwest denies the allegations to the extent they misconstrue Rhode Island law.

216. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 216 and therefore denies them.

217. Denied.

218. Denied.

219. Denied.

"WHEREFORE," First Southwest denies that the EDC is entitled to the relief sought in this count.

Answer to Count II (Breach of Fiduciary Duty—Wells Fargo's Hidden Commission)

220. First Southwest restates and realleges its responses to Paragraphs 1-212 and Paragraph 218.

221. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 221 and therefore denies them.

222. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 222 and therefore denies them.

223. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 223 and therefore denies them.

224. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 224 and therefore denies them.

225. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 225 and therefore denies them.

"WHEREFORE," First Southwest denies that the EDC is entitled to the relief sought in this count.

Answer to Count III (Fraud)

226. First Southwest restates and realleges its responses to Paragraphs 1-212 and Paragraph 218.

227. Denied.

228. Denied.

229. Denied.

230. Denied

"WHEREFORE," First Southwest denies that the EDC is entitled to the relief sought in this count.

Answer to Count IV (Fraudulent Misrepresentations and Omissions)

231. First Southwest restates and realleges its responses to Paragraphs 1-212 and Paragraph 218.

232. Denied.

233. Denied.

234. Denied.

"WHEREFORE," First Southwest denies that the EDC is entitled to the relief sought in this count.

Answer to Count V (Negligent Misrepresentation)

235. First Southwest restates and realleges its responses to Paragraphs 1-212.

236. Denied.

237. Denied.

238. Denied.

239. Denied.

“WHEREFORE,” First Southwest denies that the EDC is entitled to the relief sought in this count.

Answer to Count VI (Legal Malpractice)

240. First Southwest restates and realleges its responses to Paragraphs 1–212.

241. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 241 and therefore denies them.

242. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 242 and therefore denies them.

243. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 243 and therefore denies them.

244. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 244 and therefore denies them.

“WHEREFORE,” First Southwest denies that the EDC is entitled to the relief sought in this count.

Answer to Count VII (Negligence)

245. First Southwest restates and realleges its responses to Paragraphs 1–212.

246. Denied.

247. Denied.

"WHEREFORE," First Southwest denies that the EDC is entitled to the relief sought in this count.

Answer to Count VIII (Breach of Implied Covenant of Good Faith and Fair Dealing)

248. First Southwest restates and realleges its responses to Paragraphs 1-212.

249. Denied.

250. Denied.

251. Denied.

"WHEREFORE," First Southwest denies that the EDC is entitled to the relief sought in this count.

Answer to Count IX (Damages under R.I. Gen. Laws § 42-64-9.3 (Criminal Penalties Including Damages for Violating R.I. Gen. Laws § 42-64-1 *et seq.*))

252. First Southwest restates and realleges its responses to Paragraphs 1-212.

253. Denied.

254. Denied.

255. Denied.

256. Denied.

"WHEREFORE," First Southwest denies that the EDC is entitled to the relief sought in this count.

Answer to Count X (Mandatory Final Injunction Pursuant to EDC Enforcement Powers)

257. Although the Court dismissed this count in its ruling on Defendants' Motions to Dismiss, out of an abundance of caution, First Southwest answers this count as follows. First Southwest restates and realleges its responses to Paragraphs 1-212 and Paragraphs 253-56.

258. First Southwest admits that the EDC brings this action for purpose of enforcing the listed statutes. First Southwest denies that enforcement of the listed statutes is proper.

259. First Southwest admits that the EDC seeks injunctive relief. First Southwest denies that injunctive relief is proper.

260. First Southwest admits that Paragraph 260 quotes part of a statute, which is in writing and First Southwest denies the allegations in Paragraph 260 to the extent they mischaracterize the contents of the statute. First Southwest denies that R.I. Gen. Laws § 42-64-9.4(b) applies to this action.

261. Denied.

262. Denied.

263. Denied.

“WHEREFORE,” First Southwest denies that the EDC is entitled to the relief sought in this count.

Answer to Count XI (Civil Damages under R.I. Gen. Laws § 9-1-2 Based upon Violations of R.I. Gen. Laws §§ 11-18-1, 11-18-6, 11-18-7, 11-18-8, or 11-41-4)

264. First Southwest restates and realleges its responses to Paragraphs 1-212 and Paragraph 218.

265. Denied.

266. Denied.

267. Denied.

268. Denied.

269. Denied.

270. Denied.

“WHEREFORE,” First Southwest denies that the EDC is entitled to the relief sought in this count.

Answer to Count XII (R.I. Rico (sub-section (a)))

271. First Southwest restates and realleges its responses to Paragraphs 1-212 and Paragraph 218.

272. First Southwest admits that Paragraph 272 quotes part of a statute, which is in writing and First Southwest denies the allegations in Paragraph 272 to the extent they mischaracterize the contents of the statute.

273. Paragraph 273 is a conclusion of law; no response is required.

274. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 274 and therefore denies them.

275. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 275 and therefore denies them.

276. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 276 and therefore denies them.

277. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 277 and therefore denies them.

278. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 278 and therefore denies them.

279. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 279 and therefore denies them.

280. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 280 and therefore denies them.

281. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 281 and therefore denies them.

"WHEREFORE," First Southwest denies that the EDC is entitled to the relief sought in this count.

Answer to Count XIII (R.I. Rico (sub-section (c)))

282. First Southwest restates and realleges its responses to Paragraphs 1-212 and Paragraph 218.

283. First Southwest admits that Paragraph 283 quotes part of a statute, which is in writing and First Southwest denies the allegations in Paragraph 283 to the extent they mischaracterize the contents of the statute.

284. Paragraph 284 is a conclusion of law; no response is required.

285. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 285 and therefore denies them.

286. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 286 and therefore denies them.

287. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 287 and therefore denies them.

288. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 288 and therefore denies them.

289. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 289 and therefore denies them.

"WHEREFORE," First Southwest denies that the EDC is entitled to the relief as sought in this count.

Answer to Count XIV (Civil Conspiracy)

290. First Southwest restates and realleges its responses to Paragraphs 1-212 and Paragraph 218.

291. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 291 and therefore denies them.

292. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 292 and therefore denies them.

293. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 293 and therefore denies them.

294. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 294 and therefore denies them.

"WHEREFORE," First Southwest denies that the EDC is entitled to the relief sought in this count.

Answer to Count XV (Unjust Enrichment)

295. First Southwest restates and realleges its responses to Paragraphs 1-212.

296. First Southwest admits that it received a fee for its work on the 38 Studios bond issuance and further states that this fee was paid out of bond proceeds and not paid by the EDC. First Southwest denies any remaining allegations as to First Southwest. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies them.

297. First Southwest admits that it accepted the fee it was paid, out of the bond proceeds and not from EDC, for its work on the 38 Studios bond issuance. First Southwest lacks

knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies them.

298. First Southwest denies the allegations in Paragraph 298 as to First Southwest. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 298 and therefore denies them.

“WHEREFORE,” First Southwest denies that the EDC is entitled to the relief sought in this count.

Answer to Count XVI (Declaratory Relief on Liability)

299. First Southwest restates and realleges its responses to Paragraphs 1–298.

300. Denied as to First Southwest. First Southwest lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 300 and therefore denies them.

301. Denied.

“WHEREFORE,” First Southwest denies that the EDC is entitled to that relief as sought in this count.

FIRST SOUTHWEST’S DEFENSES

In response to the EDC’s First Amended Complaint, First Southwest hereby asserts the following defenses:

First Defense

The EDC’s First Amended Complaint fails to state a claim upon which relief can be granted.

Second Defense

The EDC’s First Amended Complaint fails to join indispensable parties under Rule 19.

Third Defense

The EDC's First Amended Complaint fails to plead fraud with the particularity required by Rule 9(b).

Fourth Defense

First Southwest is entitled to offset the amount of the proceeds from any and all sales of assets belonging to the 38 Studios bankruptcy estate against any damages that might be awarded.

Fifth Defense

The EDC's claims are barred in whole or in part because the EDC has not suffered any harm, injury, or damages.

Sixth Defense

The EDC's claims are barred in whole or in part because the EDC lacks standing to sue.

Seventh Defense

The EDC's claims are barred in whole or in part because the EDC has failed to mitigate its damages.

Eighth Defense

The EDC's claims are barred in whole or in part because the EDC's alleged damages are the results of actions of other persons or entities over whom First Southwest had no control

Ninth Defense

The EDC's claims are barred in whole or in part by the doctrine of contributory negligence and the doctrine of assumption of the risk.

Tenth Defense

The EDC's claims are barred in whole or in part by the doctrine of imputation.

Eleventh Defense

The EDC's claims are barred in whole or in part by the doctrine of in pari delicto.

Twelfth Defense

The EDC's claims are barred in whole or in part by the economic-loss rule.

Thirteenth Defense

The EDC's claims are barred in whole or in part by the doctrine of unclean hands.

Fourteenth Defense

The EDC's claims are barred in whole or in part by the voluntary-payment doctrine.

Fifteenth Defense

The EDC's claims are barred in whole or in part by the applicable statute(s) of limitations or, in the alternative, laches.

Sixteenth Defense

The EDC's claims are barred in whole or in part by estoppel and/or waiver.

Seventeenth Defense

The EDC's claims are barred in whole or in part by the doctrine of independent, intervening cause.

Eighteenth Defense

The EDC's claims are barred in whole or in part by the doctrine of ripeness.

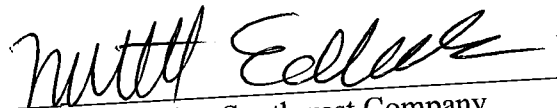
Nineteenth Defense

The EDC is not entitled to injunctive relief because such relief is not in the public interest and the EDC has not made the showings necessary for such relief.

WHEREFORE, having fully answered the EDC's First Amended Complaint, First Southwest demands that judgment be entered in its favor, that it be awarded the costs of this action, and that the Court award it such other and further relief as the Court deems just and proper.

Dated: September 25, 2013

Respectfully submitted,



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I certify that a true and accurate copy of the within Defendant First Southwest Company's Answer to First Amended Complaint was mailed and/or emailed to counsel of record, as set forth above, on September 25, 2013.

